

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 35

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL G. ANGOTT
and
THOMAS G. XYDIS

Appeal No. 1999-1789
Application No. 08/920,652

ON BRIEF

Before JERRY SMITH, RUGGIERO, and LEVY, Administrative
Patent Judges.

RUGGIERO, Administrative Patent Judge.

RELATED APPEAL

This appeal is related to Appeal No. 1999-0002 in
Application Serial No. 08/922,093, decided concurrently
herewith.

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DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 15-21, which are the only claims remaining in the application. Claims 1-14 have been canceled. An amendment filed April 23, 1998 after final rejection was approved for entry by the Examiner.

The disclosed invention relates to a push button switch assembly for activating a doorbell chime. The push button assembly, which replaces the existing switch in a doorbell system, includes a manually actuated push button which simultaneously actuates first and second series connected switches. Actuation of the first switch energizes the existing doorbell chime while actuation of the second switch energizes a radio transmitter to generate a radio frequency signal which is sent to a remote chime.

Claim 15 is illustrative of the invention and reads as follows:

15. An apparatus for activating a doorbell chime and remotely controlling an auxiliary doorbell chime comprising:

a push button unit for replacing a doorbell switch connected in series with a doorbell chime in an existing doorbell system, said push button unit

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adapted to be located at a first location at which the doorbell switch to be replaced is mounted and adapted to be connected in series with the doorbell chime to a pair of electrical power lines;

a push button switch assembly in said push button unit, said push button switch assembly including a pair of first and second normally open and electrically independent switches and a manually actuated push button mechanically coupled to said pair of first and second switches, respectively, for simultaneously moving said first and second switches in response to movement of said push button, said first switch adapted to be connected in series with the doorbell chime to the power lines;

a radio frequency transmitter in said push button unit for generating a radio frequency wave and being connected in series with said second switch, said transmitter and said second switch adapted to be connected in series with the doorbell chime; and

a remote unit adapted to be located at a second location remote from the first location and being responsive to said radio frequency wave for generating an auxiliary acoustic frequency wave representing manual actuation of said push button whereby when the power lines are connected to a source of electrical power and the doorbell chime and said push button unit are connected in series with the power lines, manual actuation of said push button simultaneously closes said switches to energize the doorbell chime and generate a source acoustic wave at the first location and activates said transmitter to generate said auxiliary acoustic frequency wave from said remote unit.

The Examiner relies on the following prior art:

Levinson et al. (Levinson) 4,523,193 Jun.

11, 1985

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Claims 15-21 stand finally rejected under 35 U.S.C.
§ 103 as being unpatentable over Levinson.

Rather than reiterate the arguments of Appellants
and the Examiner, reference is made to the Briefs¹ and
Answer for the respective details.

OPINION

We have carefully considered the subject matter on
appeal, the rejection advanced by the Examiner, and the
evidence of obviousness relied upon by the Examiner as
support for the rejection. We have, likewise, reviewed
and taken into consideration, in reaching our decision,
Appellants' arguments set forth in the Briefs along with
the Examiner's rationale in support of the rejection and
arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record
before us, that the evidence relied upon and the level of
skill in the particular art would not have suggested to
one

¹The original Appeal Brief was filed June 19, 1998 (Paper No. 21). In response to the Examiner's Answer dated July 23, 1998 (Paper No. 22), a Reply Brief was filed August 7, 1998 (Paper No. 23) which was acknowledged and entered by the Examiner without further comment as indicated in the communication dated October 6, 1998 (Paper No. 27). A revised Appeal Brief was filed April 23, 2001 (Paper No. 31) in response to a requirement by the Examiner mailed April 3, 2001 (Paper No. 30).

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of ordinary skill in the art the obviousness of the invention as set forth in claims 15-21. Accordingly, we reverse.

With respect to independent claims 15, 20, and 21, the Examiner attempts to modify the remote control doorbell disclosure of Levinson which discloses a single push button doorbell switch 20 which simultaneously activates a doorbell chime 22 and a radio transmitter 26 (Levinson, Figure 1). According to the Examiner, Levinson discloses the claimed invention except that there is no disclosure of a

" . . . push button switch assembly including a pair of first and second normally open and electrically independent switches and a manually actuated push button . . . for simultaneously moving the first and second switches in response to movement of the push button."

(Answer, pages 4-5). The Examiner nevertheless suggests the obviousness to the skilled artisan of using a pair of switches rather than the single switch of Levinson since Levinson's single doorbell switch is " . . . functionally equivalent to the claimed the [sic] pair of first and second switches because both the single switch and the

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pair of switches is [sic, are] for simultaneously energizing the doorbell chime and the radio transmitter." (Answer, page 5).

In response, Appellants assert (Brief, pages 3 and 4; Reply Brief, page 1) that the Examiner has failed to establish a prima facie case of obviousness since there is no suggestion in the applied prior art for making the Examiner's proposed modification. After careful review of the applied Levinson reference in light of the arguments of record, we are in agreement with Appellants' position as stated in the Briefs.

Initially, we find the Examiner's reliance on the functional equivalence of Levinson's single doorbell switch and Appellants' claimed pair of switches to be unfounded since the Examiner has not established support for a conclusion of art recognized functional equivalence. The mere fact that two elements are used for the same purpose or, in the Examiner's words (Answer, page 7) " . . . provides the same operating functions . . . , " does not establish art recognized functional equivalence. In order to rely on equivalence as a rationale for supporting an obviousness rejection, the

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equivalency must be recognized in the prior art, and cannot be based on appellants' disclosure or the mere fact that the components at issue are functional or mechanical equivalents. In re Ruff, 256 F.2d 590, 599, 118 USPQ 340, 348 (CCPA 1958).

We further agree with Appellants that no suggestion exists in Levinson for making the modification suggested by the Examiner. Appellants have attacked the remote control doorbell problem by replacing the existing doorbell push button switch with a series connected switch pair mounted at the original push button switch location as claimed. Levinson, on the other hand, actuates a remote doorbell chime by adding a transmitter connected in parallel across an existing doorbell chime. In our view, Levinson's solution to the problem of effectively providing a remote control doorbell feature is so opposite in approach to that of Appellants that any suggestion to modify Levinson to arrive at Appellants' claimed series connected switch pair could only come from Appellants' own disclosure and not from any teaching in the Levinson reference.

In our view, we are left to speculate why one of

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ordinary skill would have found it obvious to alter the applied prior art to make the modification suggested by the Examiner. The only reason we can discern is improper hindsight reconstruction of Appellants' claimed invention. In order for us to sustain the Examiner's rejection under 35 U.S.C. § 103, we would need to resort to speculation or unfounded assumptions or rationales to supply deficiencies in the factual basis of the rejection before us. In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968), reh'g denied, 390 U.S. 1000 (1968).

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Accordingly, since we are of the opinion that the prior art applied by the Examiner does not support the obviousness rejection, we do not sustain the rejection of independent claims 15, 20, and 21, nor of claims 16-19 dependent thereon. Therefore, the Examiner's decision rejecting claims 15-21 under 35 U.S.C. § 103 is reversed.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH F. RUGGIERO)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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STUART S. LEVY)	
Administrative Patent Judge)	

JFR:hh

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HAROLD W. MILTON, JR.
HOWARD & HOWARD
1400 NORTH WOODWARD AVE.
SUITE 101
BLOOMFIELD HILLS, MI 48304